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TITLE 14

LOCAL GOVERNMENT

(CHAPTERS 1-53 IN VOLUME 9; CHAPTERS 54-103 IN
VOLUME 10; CHAPTERS 104-182 IN VOLUME 11A;
CHAPTERS 183-295 IN VOLUME 11B)

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SUBTITLE 18. ROADWAYS, BRIDGES, AND PARKING GENERALLY

CHAPTER 296

GENERAL PROVISIONS

SECTION.

- | | |
|--|-------------------------|
| 14-296-101. Maintenance of roads where | through adverse posses- |
| public use acquired | sion. |

14-296-101. Maintenance of roads where public use acquired through adverse possession.

If the public obtains the right to use a road through adverse possession, the municipality or county in which the road is located shall have the authority to maintain the road.

History. Acts 1991, No. 879, § 1.

CHAPTER 297 COUNTY HIGHWAY COMMISSION

SECTION.

14-297-101 — 14-297-113. [Repealed.]

14-297-101 — 14-297-113. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1987, No. 158, § 2. The chapter was derived from the following sources:

14-297-101. Acts 1939, No. 379, § 6; A.S.A. 1947, § 76-806.

14-297-102. Acts 1939, No. 379, § 1; A.S.A. 1947, § 76-801.

14-297-103. Acts 1939, No. 379, §§ 1-4, 14; A.S.A. 1947, §§ 76-801 — 76-804, 76-814.

14-297-104. Acts 1939, No. 379, § 7; A.S.A. 1947, § 76-807.

14-297-105. Acts 1939, No. 379, § 3; A.S.A. 1947, § 76-803.

14-297-106. Acts 1939, No. 379, § 13; A.S.A. 1947, § 76-813.

14-297-107. Acts 1939, No. 379, § 9; A.S.A. 1947, § 76-809.

14-297-108. Acts 1939, §§ 6, 10; A.S.A. 1947, §§ 76-806, 76-810.

14-297-109. Acts 1939, No. 379, § 3; A.S.A. 1947, § 76-803.

14-297-110. Acts 1939, No. 379, § 8; A.S.A. 1947, § 76-808.

14-297-111. Acts 1939, No. 379, § 5; A.S.A. 1947, § 76-805.

14-297-112. Acts 1939, No. 379, § 11; A.S.A. 1947, § 76-811.

14-297-113. Acts 1939, No. 379, § 12; A.S.A. 1947, § 76-812.

CHAPTER 298

ESTABLISHMENT, ALTERATION, AND VACATION OF COUNTY ROADS

SECTION.

14-298-105. Appointment of viewers — Duties.

14-298-107. [Repealed.]

14-298-108. Notices to landowners and viewers.

14-298-109. Viewing, surveying, and laying out road.

14-298-110. Determination of road width.

14-298-113. Proceedings on report — Compensation and damages.

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14-298-116. Appeal to circuit court.

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14-298-121. Opening or altering roads in counties voting for road tax generally.

14-298-123. Replacement of washed-out road.

14-298-124. Altering public roads on private land.

14-298-101. Powers of county court.**RESEARCH REFERENCES**

Ark. L. Notes. Foster, The County Road Quagmire: How to Establish the Existence of a County Road and Other Ingress, Egress Conundrums, 2008 Ark. L. Notes 33.

CASE NOTES**County Roads.**

County road held not created. Arkansas Game & Fish Comm'n v. Lindsey, 292 Ark. 314, 730 S.W.2d 474 (1987).

Cited: Oliver v. Washington County, 328 Ark. 61, 940 S.W.2d 884 (1997).

14-298-103. Application by petition — Bond.**CASE NOTES****Signatures.**

Where only six freeholders signed a petition to vacate a county road, rather than the 10 required by the statute, the county court did not have jurisdiction to

vacate the road and, therefore, the judgment was reversed, even though the appeal was untimely. Perry v. Lee County, 71 Ark. App. 47, 25 S.W.3d 443 (2000).

14-298-105. Appointment of viewers — Duties.

(a) On presentation of the petition and proof of notice of publication as set out in § 14-298-102 and if the county court is satisfied that proper notice has been given in accordance with the provisions of this chapter, the court shall appoint three (3) disinterested citizens of the county as viewers, who shall also:

(1) Be a jury to assess and determine the compensation to be paid in money for the property sought to be appropriated, without deduction for benefits to any property of the owners; and

(2) Assess and determine what damages each owner of the lands over which the road is to run shall suffer by the opening and construction of the road.

(b) The county court shall issue its order directing the viewers to proceed on a day to be named in the order to view, survey, and lay out or alter the road and also determine whether the public convenience requires that the road, or any part thereof, shall be established.

History. Acts 1871, No. 26, §§ 46, 48, p. 56; C. & M. Dig., §§ 5231, 5233; Pope's Dig., §§ 6946, 6948; A.S.A. 1947, §§ 76-905, 76-907; Acts 2005, No. 1200, § 1.

14-298-107. [Repealed.]

Publisher's Notes. This section, concerning penalty for neglect or refusal of viewers, reviewers, or surveyors to perform duties, was repealed by Acts 2005,

No. 1200, § 2. The section was derived from Acts 1871, No. 26, § 62, p. 56; C. & M. Dig., § 5245; Pope's Dig., § 6960; A.S.A. 1947, § 76-921.

14-298-108. Notices to landowners and viewers.

(a) It shall be the duty of one (1) of the petitioners to give at least thirty (30) days' notice in writing to:

(1) The owner or his or her agents, if residing within the county, or if the owner is an incapacitated person as defined by § 28-65-104, then to the guardian of that person, if a resident of the county, through whose land the road is proposed to be laid out and established; and

(2) The viewers named in the order of the county court of the time and place of meeting as specified in the order.

(b)(1)(A) It is further made the duty of the principal petitioner, if the road is proposed to be laid out on or through any land owned by nonresidents of the county, to cause notice to the nonresidents of the county to be served as provided by the Arkansas Rules of Civil Procedure, and if service is not obtained, then the notice shall be published one (1) time per week for two (2) consecutive weeks in some newspaper of general circulation published in the county.

(B) If there is no newspaper published in the county, then notice shall be given to the nonresident by posting a notice of the time and place of meeting of the viewers as specified in the order of the county court.

(2) The substance of the petition for the road shall also be posted upon the door of the office of the clerk of the county court for at least two (2) weeks before the time fixed for the meeting of the viewers.

History. Acts 1871, No. 26, § 49, p. 56; A.S.A. 1947, § 76-908; Acts 2005, No. C. & M. Dig., § 5234; Pope's Dig., § 6949; 1200, § 3.

14-298-109. Viewing, surveying, and laying out road.

It shall be the duty of the viewers to meet at the time and place specified in the order. After taking an oath or affirmation to faithfully and impartially discharge the duties of their appointments, respectively, they shall take to their assistance two (2) suitable persons as chain carriers and one (1) person as marker and proceed to view, survey, and lay out or alter the roads as prayed for in the petition, or as near the same as in their opinion a good road can be made with reasonable expense, taking into consideration the ground, convenience, and inconvenience and expense which will result to individuals as well as to the public if the road is established, or any part thereof, or altered as prayed for. In laying out or altering or establishing public highways, the highways shall be located as near as practicable on section and subdivision lines.

History. Acts 1871, No. 26, § 50, p. 56; § 5235; Pope's Dig., § 6950; A.S.A. 1947, 1899, No. 202, § 1, p. 364; C. & M. Dig., § 76-909; Acts 2005, No. 1200, § 4.

14-298-110. Determination of road width.

(a)(1) The viewers shall report what width the road should be to promote public convenience.

(2) However, the county courts shall have power to determine what shall be the width of each road in their respective counties.

(b) The presumed width of a public road shall be fifty feet (50'), providing a minimum of twenty-five feet (25') of right-of-way on either side of the center line.

History. Acts 1871, No. 26, § 48, p. 56; A.S.A. 1947, § 76-907; Acts 2005, No. C. & M. Dig., § 5233; Pope's Dig., § 6948; 1200, § 5.

14-298-113. Proceedings on report — Compensation and damages.

(a) The county court, on receiving the reports of the viewers as set out in § 14-298-112, shall cause the report to be available to all parties and shall cause a hearing to be held in which the report is read publicly.

(b) If no legal objection is made to the reports by the parties and the court is satisfied that the road, or any part thereof, will be of sufficient importance to the public to cause the damages and the compensation that have been assessed as set out in § 14-298-111 to be paid by the county, and that the amount so assessed is reasonable and just, and the report of the viewers being favorable thereto, the court shall order the damages to be paid to the persons entitled thereto from the county treasury, and thenceforth the road shall be considered a public road.

(c) If the court is of the opinion that the road is not of sufficient public utility for the county to pay the compensation and damages assessed as set out in § 14-298-111 and the petitioners refuse to pay the compensation and damages, then the road shall not be declared a public highway or road and the costs accruing by reason of the application shall be paid by the petitioners, as provided in § 14-298-103. If the report of the viewers is against the proposed road or alteration, or if the road is not of sufficient public utility, in the opinion of the court, then no further proceedings shall be had thereon and the obligors in the bond securing costs and expenses shall be liable for the full amount of the costs and expenses.

History. Acts 1871, No. 26, § 53; C. & M. Dig., § 5238; Pope's Dig., § 6953; A.S.A. 1947, § 76-912; Acts 2005, No. 1200, § 6.

14-298-114. Order opening road.

After any road has been established and declared a public road, the county court shall issue an order declaring the road to be opened and the order shall be filed of record with the county clerk.

History. Acts 1871, No. 26, § 54, p. 56; A.S.A. 1947, § 76-913; Acts 2005, No. C. & M. Dig., § 5239; Pope's Dig., § 6954; 1200, § 7.

14-298-115. Review.

(a) After the viewers of any county road shall have made return in favor of the road and before the road has been established, any citizen of the county whose lands are affected by the road may apply by petition to the county court for a review of the road, as provided in § 14-298-103.

(b) The court, on being satisfied from the petition that a review should be granted, shall appoint three (3) disinterested freeholders of the county to review the road and issue their order to the reviewers directing them to meet at a time and place therein specified. After taking the oath required of viewers, they shall proceed to examine the route surveyed for the road by the former viewers and make a report in writing to the court stating their opinion in favor of or against the establishment of the road, or any part thereof, and their reasons therefor.

(c) The petitioners for review shall give at least thirty (30) days' notice to the principal petitioner for the road of the time and place of meeting of the reviewers.

(d) If a review is granted, then no further proceedings shall be had until the reviewers have reported their action to the court.

(e)(1) If the report of the reviewers is in favor of the road, the road shall be established, recorded, and opened, and the persons bound for the review shall pay into the county treasury the amount of the costs of the review.

(2) If the report is against the establishment of the road, no further proceedings shall be had about the road before the court, and the persons executing the first bond shall pay into the county treasury the costs and expenses of the views, survey, and review of the road.

History. Acts 1871, No. 26, § 55, p. 56; A.S.A. 1947, § 76-914; Acts 2005, No. C. & M. Dig., § 5240; Pope's Dig., § 6955; 1200, § 8.

14-298-116. Appeal to circuit court.

(a)(1) An appeal from the final decision of the county court for a new county road or for vacating, altering, or reviewing any county road shall be allowed to the circuit court.

(2) Notice of the appeal shall be given within thirty (30) days from the date the order of the county court is filed of record with the county clerk.

(b) The appellant, within thirty (30) days following the decision, shall enter into bond, with good and sufficient security, to be approved by the clerk of the county court, for the payment of all costs and expenses arising from the appeal.

(c) Incapacitated persons, as defined by § 28-65-104, or their guardians may appeal without giving bond.

(d) The circuit court may order another view or review of the road or make other orders as justice of the case demands.

(e) The county court, after notice of appeal has been given, shall not issue any order in the premises until after thirty (30) days have expired from the time of making the decision appealed from.

(f) If the appeal has not been perfected agreeably to the provisions of this chapter, the clerk shall issue the order for the opening of the road.

(g) The decisions of the circuit court on petitions for roads taken into the county by appeal shall be recorded in the record of the county court from which the appeal is taken.

History. Acts 1871, No. 26, § 56, p. 56; A.S.A. 1947, § 76-915; Acts 2005, No. C. & M. Dig., § 5241; Pope's Dig., § 6956; 1200, § 9.

14-298-117. Vacation of road.

(a)(1) When any county road or any part of any county road is considered useless, any ten (10) citizens residing in that portion of the county may make application by petition agreeable to § 14-298-124 to the county court to vacate the road, setting forth in the petition the reason why the road ought to be vacated.

(2) The petition shall be publicly read by the county court at the hearing on the petition, with the proof of notice and publication required by this chapter.

(b) If no objections are made and filed, the county court may declare the road vacated, or any part thereof that it may deem necessary.

(c) If objection is made in writing, the county court shall appoint three (3) viewers to view the road who shall proceed, after taking the oath or affirmation required by this chapter, to view the road as aforesaid and make a written report of their opinion thereon, and their reason for the opinion, to the county court. If the viewers shall report in favor of vacating the road, or any part thereof, the court, if it deems the report reasonable and just, may declare the road, or any part thereof, vacated, agreeable to the report of the viewers.

(d) The costs thereof and expenses incident thereto shall be paid by the petitioners unless the county court shall order the costs and expenses paid out of the county treasury.

History. Acts 1871, No. 26, § 58, p. 56; A.S.A. 1947, § 76-918; Acts 2005, No. C. & M. Dig., § 5247; Pope's Dig., § 6966; 1200, § 10.

CASE NOTES

Procedures Required.

Because any person could object to a petition to vacate a county road pursuant to subsection (c) of this section, a judge who was not a resident of the county where the road was located could object; the judge also was permitted to appeal

from a decision vacating the road because the judge was a party to the proceedings to vacate the road and was aggrieved by the ruling. *Brown v. Hicks*, 2011 Ark. 41, — S.W.3d — (2011).

Cited: *Reding v. Wagner*, 350 Ark. 322, 86 S.W.3d 386 (2002).

14-298-118. Compensation.

(a) All persons required to render services under the provisions of this chapter as viewers or reviewers, chain carriers, markers, or surveyors shall be paid reasonable costs and expenses based upon the current market rate out of the registry of the court for each day necessarily employed, and payments are to be charged as costs and expenses against a petitioner.

(b) The amount due to each person and the number of days employed shall be certified under oath by the viewers or reviewers, as the case may be.

(c) The county shall be reimbursed for the payment so made and for all other necessary expenses incident to the proceedings, by a petitioner, as hereinbefore provided.

(d) The county clerk shall receive fees he may be entitled to by law, to be taxed as costs and paid as provided in this section.

History. Acts 1871, No. 26, § 64, p. 56; A.S.A. 1947, § 76-922; Acts 2005, No. C. & M. Dig., § 5243; Pope's Dig., § 6958; 1200, § 11.

14-298-120. Opening, changing, and classifying roads by order of county court.

(a)(1) The county courts shall have power to:

(A) Open new roads;

(B) Make changes in old roads, as they deem necessary and proper; and

(C) Classify the roads and bridges in their respective counties for the purposes of this section and § 27-67-212.

(2)(A) When the change shall be made or any new road opened, the road shall be located on section lines as nearly as may be, taking into consideration the conveniences of the public travel, contour of the country, etc.

(B) Roads hereafter established or opened as public roads shall not be less than fifty feet (50') wide, providing a minimum of twenty-five feet (25') of right-of-way on either side of the center line.

(3) An appropriate order of the county court shall be made and entered of record therefor.

(b)(1) Any five (5) or more interested landowners may petition the county court for the opening of any road as a public road.

(2) The petition shall give the starting point and terminus of the road, as well as intermediate points, and such other description or plat as will permit the location of the road by the county surveyor.

(c)(1)(A) The petition shall be accompanied by a bond signed by at least one (1) of the petitioners and by other good and sufficient sureties.

(B) The bond shall provide for reimbursing the county for any claims that may be sustained against the county for lands taken by opening of the road.

(2) The petitioners shall cause notice to be served upon the landowners as provided by the Arkansas Rules of Civil Procedure.

(d)(1) On filing the petition, the county court shall set a date for the hearing.

(2) If service is not obtained, then by one (1) insertion for two (2) weeks at least thirty (30) days before the hearing in some newspaper having a general circulation in the county, the county clerk shall publish a notice as to the filing of the petition, naming the day on which the county court will hear the parties and those for and those against the opening of the road.

(e) On the day named, the county court shall hear those for and against the opening of the petitioned road and shall grant or deny the prayer of the petitioners as may be deemed wise and expedient by the court and shall make and cause to be entered an appropriate court order either laying out or changing the road or denying the petition.

(f) Upon the entry of the foregoing order of the county court, the clerk of the court within ten (10) days shall cause a copy of the order to be served upon each of the owners of record of any lands affected by the order. The service shall be in the form and manner provided by law for service in civil actions.

(g) Upon return to be made by the sheriff showing service of the order upon any landowner, the clerk shall note in the records of the county court the record of the service, showing the date thereof and the person served, which shall be and become a part of the permanent records of the court.

(h) Upon the entry of the order by the county court, the records shall constitute valid constructive notice to all subsequent purchasers of the lands and all other persons acquiring or holding the lands by or through the landowners affected.

(i) If the owner of the land over which any road shall hereafter be so laid out by the court shall refuse to give a right-of-way therefor, then the owner shall have the right to present his or her verified claim to the county court for damages the owner may claim by reason of the road's being laid out on his or her land.

(j) If the owner is not satisfied with the amount allowed by the court, he or she shall have the right to appeal, as now provided by law from judgments of the county court.

(k) However, no claim shall be presented for such damages after twelve (12) months from the date of the service of the order as provided in this section. When the order is made and entered of record laying out or changing any road, the county court or judge thereof shall have the right to enter upon the lands of the owner and proceed with the construction of the road. All damages allowed under this section shall be paid out of any funds appropriated for roads and bridges, and if no funds are so appropriated, then damages shall be paid out of the general revenue fund of the county.

(l) This section and § 27-67-212 shall be cumulative to all existing laws and parts of laws, and shall not be construed as to repeal any

existing laws or parts of laws, unless they are in conflict herewith, and then only to the extent of the conflict.

History. Acts 1965, No. 387, §§ 1, 2, 4; A.S.A. 1947, §§ 76-926, 76-927, 76-928n; Acts 2005, No. 1200, § 12.

Effective Dates. Acts 1871, No. 26, § 74: effective on passage.

CASE NOTES

ANALYSIS

Construction.
Purpose.
County Roads.
Petition by Highway Commission.

Construction.

A county judge's executive authority, under Ark. Const. Amend. 55, § 3, and under this section, to make changes in the routes of old county roads is not negated by § 14-298-117; § 14-298-117 is merely a procedure whereby any ten citizens may make application by petition asking the county judge to vacate a road, and it in no way conflicts with this section. *Reding v. Wagner*, 350 Ark. 322, 86 S.W.3d 386 (2002).

Purpose.

In accord with bound volume. *Arkansas State Hwy. Comm'n v. Dotson*, 301 Ark. 54, 781 S.W.2d 459 (1989).

County Roads.

County road held not created. *Arkansas Game & Fish Comm'n v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

Trial court properly awarded an injunction to a partnership in its action for the removal of a large flower box that homeowners placed on the eastern end of a road

in a subdivision because nothing that the trial court did invaded the county judge's province; the trial court declared, as it had the authority to do, that the homeowners could not obstruct a public road and interfere with the partnership's access to its property. *Jones v. Juanita S. Wood Family Ltd. P'ship*, 95 Ark. App. 326, 236 S.W.3d 573 (2006).

Petition by Highway Commission.

While this section gives the county court the power to condemn land on its own motion and upon petition of interested landowners, it does not permit a petition of the State Highway Commission to be acted on by the county court. *Arkansas State Hwy. Comm'n v. Dotson*, 301 Ark. 54, 781 S.W.2d 459 (1989).

Where the record contained no petition to condemn land by the State Highway Commission to the county court, and the recitation by the county court order that there was such a petition was apparently a reference to action by the commission to "call upon" the county to act as permitted in § 27-67-212(a), the county was the condemning authority, and the commission was not a party. *Arkansas State Hwy. Comm'n v. Dotson*, 301 Ark. 54, 781 S.W.2d 459 (1989).

Cited: *Oliver v. Washington County*, 328 Ark. 61, 940 S.W.2d 884 (1997).

14-298-121. Opening or altering roads in counties voting for road tax generally.

(a)(1) The county courts shall have power to:

(A) Open new roads;

(B) Make changes in old roads as they may deem necessary and proper; and

(C) Classify the roads and bridges in their respective counties for the purpose of this chapter.

(2)(A) When the change is made or any new road is opened, the road shall be located on section lines as nearly as may be, taking into consideration the conveniences of the public travel, contour of the country, etc.

(B) Roads hereafter established or opened as public roads shall not be less than fifty feet (50') wide, providing a minimum of twenty-five feet (25') of right-of-way on either side of the center line.

(3) An appropriate order of the county court shall be made and entered of record.

(b)(1) Any five (5) or more interested landowners may petition the county court for the opening of any road as a public road.

(2) The petition shall give the starting point and terminus of the road, as well as intermediate points, and other description or plat that permits the location of the road by the county surveyor.

(c)(1) The petition shall be accompanied by a bond signed by at least one (1) of the petitioners and by other good and sufficient sureties.

(2) The bond shall provide for reimbursing the county for any claims that may be sustained against the county for lands taken by opening of the road.

(d)(1) On filing the petition, the county court shall set a date for the hearing.

(2)(A) It shall be the duty of one (1) of the petitioners to give at least thirty (30) days' notice in writing to the owners as required by § 14-298-108.

(B) If service is not obtained, then by one (1) insertion for two (2) weeks in some newspaper published and having a general circulation in the county, the county clerk shall publish a notice as to the filing of the petition and naming the day on which the county court will hear the parties and those for and against the opening of the road.

(e) On the day named, the county court shall hear those for and against the opening of the petitioned-for road and shall grant or deny the prayer of the petitioners as they may be deemed wise and expedient by the court and shall make and cause to be entered an appropriate court order either laying out the road or denying the petition.

(f) If the owner of the land over which any road shall hereafter be so laid out by the court shall refuse to give a right-of-way therefor or to agree upon the damages therefor, then that owner shall have the right to present his or her verified claim to the county court for such damages as the owner may claim by reason of the road being laid out on his or her land, and if the owner is not satisfied with the amount allowed by the court, the owner shall have the right to appeal as now provided by law from judgments of the county court.

(g)(1) However, no claim shall be presented for the damages after twelve (12) months from the date of the order laying out or changing any road.

(2) When the order is made and entered of record laying out or changing any road, the county court or county judge shall have the right to enter upon the lands of the owner and proceed with the construction of the road.

(3) All damages allowed under this chapter shall be paid out of any funds appropriated for roads and bridges, and if no such funds exist, then damages shall be paid out of the general revenue fund of the county.

History. Acts 1899, No. 200, § 4, p. 347; 1911, No. 422, § 1; C. & M. Dig., § 5249; Acts 1923, No. 611, § 1; Pope's Dig., § 6968; A.S.A. 1947, § 76-917; Acts 2005, No. 1200, § 13.

CASE NOTES

ANALYSIS

Authority to Condemn Land.
—Notice.
County Roads.

Authority to Condemn Land.

—Notice.

Notice is essential because the landowner is entitled to a hearing upon the issue of compensation. *Arkansas State Hwy. Comm'n v. Cordes Motors, Inc.*, 315 Ark. 285, 867 S.W.2d 178 (1993).

Notice by widening a road at one place does not constitute a notice of taking on the same road at another place. *Arkansas State Hwy. Comm'n v. Cordes Motors, Inc.*, 315 Ark. 285, 867 S.W.2d 178 (1993).

Proof of notice requires a showing of either a prior filing of a claim for compensation, or an actual entry on the land that constitutes a substantial invasion; an en-

try that is physical and visible and would alert an ordinary person to the fact that the government is exercising dominion over the property. *Arkansas State Hwy. Comm'n v. Cordes Motors, Inc.*, 315 Ark. 285, 867 S.W.2d 178 (1993).

The burden is on the condemnor to prove notice; however, proof that notice was given to an owner will constitute notice to all subsequent owners. *Arkansas State Hwy. Comm'n v. Cordes Motors, Inc.*, 315 Ark. 285, 867 S.W.2d 178 (1993).

County Roads.

County road held not created. *Arkansas Game & Fish Comm'n v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

Cited: *Arkansas State Hwy. Comm'n v. Dotson*, 301 Ark. 54, 781 S.W.2d 459 (1989); *Dotson v. Madison County*, 311 Ark. 395, 844 S.W.2d 371 (1993); *Oliver v. Washington County*, 328 Ark. 61, 940 S.W.2d 884 (1997).

14-298-122. Opening or altering roads in counties voting for road tax — Notice by actions.

CASE NOTES

Cited: *Oliver v. Washington County*, 328 Ark. 61, 940 S.W.2d 884 (1997).

14-298-123. Replacement of washed-out road.

(a) When any county road may be injured or destroyed by the washing of any lake, river, or creek, the judge of the county court shall be notified by any witness in writing of the nature and extent of the injury.

(b) If the judge shall be satisfied that the road has been injured or destroyed to such extent as to inconvenience the traveling public, the judge shall appoint (3) viewers. They may, if in their judgment it is necessary, take with them a competent surveyor and proceed to view and survey a new road upon such ground as will accommodate the traveling public.

(c) The viewers shall determine the compensation to be allowed the owners of the property sought to be appropriated, at its true value, and the damages occasioned by the new road and shall make a report of

their doings in the manner pointed out in this chapter as the duties of viewers of new roads.

(d) Appeals may be taken from the appointment and orders of the judge and from the assessment allowed by the viewers as a jury to the owners of the property, in the manner provided by this chapter, within the time allowed by law, after the first regular term of the court thereafter held.

(e) The appointment of viewers and order of the judge provided in this chapter shall be recorded in the records of the court.

(f) The county court shall be governed in the reception, approving, and recording of the report of viewers, in all respects, as is prescribed in the case of new roads, except no notice of the destruction or injury to the road shall be required except as required by this section.

(g) All costs, damages, and expenses arising under the provisions of this section shall be paid out of the county treasury on the warrant of the county clerk.

History. Acts 1871, No. 26, § 59, p. 56; A.S.A. 1947, § 76-919; Acts 2005, No. C. & M. Dig., § 5248; Pope's Dig., § 6967; 1200, § 14.

14-298-124. Altering public roads on private land.

(a)(1) If any person through whose land a public road is or may be established shall be desirous of turning the road through any other part of his or her land, that person shall apply by petition to the county court to permit him or her to turn the road through any other part of his or her land on as good ground and without increasing the distance to the injury of the public.

(2) Upon presentation of the petition, the person shall present a supporting affidavit to the effect that the proposed change will not materially increase the distance to the injury of the public, together with opinions by supporting affidavits in writing as to the utility or practicability of the alteration.

(b) The court shall declare the new road a public highway if:

(1) The court finds that the prayer of the petition is reasonable and the alteration will not place the road on worse ground or increase the distance to the injury of the public;

(2) The court is satisfied that the new road will be opened by the petitioner, a legal width and, in all respects made as good as the old road was for the convenience of travelers; and

(3) In the opinion of the court, the petition shall be just and reasonable.

(c) A person desiring the alteration provided in this section shall pay all the cost incident to the proceedings, and no damages shall be allowed to any petitioner under the provisions of this section by reason of any such change to any petitioner.

History. Acts 1871, No. 26, § 57, p. 56; § 5246; Pope's Dig., § 6965; A.S.A. 1947, 1897 (Ex. Sess.), No. 10, §§ 1, 2, p. 33; § 76-916; Acts 2005, No. 1200, § 15. 1907, No. 427, § 1, p. 1147; C. & M. Dig.,

CASE NOTES

County Roads.

County road held not created. Arkansas Game & Fish Comm'n v. Lindsey, 292 Ark. 314, 730 S.W.2d 474 (1987).

CHAPTER 301

MUNICIPAL STREETS GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-301-106. Sidewalks, curbing, and gut-

tering in cities of the first class — Exceptions.

14-301-101. City council — Powers and duties.

CASE NOTES

County Court Jurisdiction.

This section does not take jurisdiction over streets from the county court for three distinct reasons: first, the constitution gives jurisdiction to the county court (Ark. Const., Art. 7, § 28); second, no other court is given jurisdiction by the constitution to exercise the power of eminent domain to create a road, and neither the constitution nor § 27-66-401 limits applicability of a road creation proceeding to the unincorporated geographic areas of a county; and third, there is no real con-

flict between the county court's jurisdiction to exercise the power of eminent domain to give the owner of a landlocked tract a private roadway out of his land and a statute giving municipalities the control and supervision of city streets. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

The separation of powers doctrine was not violated by allowing the county court to exercise jurisdiction over roads within city. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

14-301-102. Dedication of streets.

CASE NOTES

Acceptance.

The control and supervision of streets within a municipality is given to the executive and legislative branches of the municipality; no street within the city may be dedicated to the city until accepted and confirmed by a municipal ordinance specially passed for that purpose. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

A city does not have to accept the control and supervision and concurrent cost of maintenance of a city street unless it chooses to do so. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

Order that quieted title in favor of landowners was reversed as lots were sold with the reference to the dedication of easements and lot owners title being subject to public uses; thus, dedication be-

came irrevocable upon sale of lots even if the city did not confirm or accept the dedication by ordinance, as required by this section. *City of Cabot v. Brians*, 93 Ark. App. 77, 216 S.W.3d 627 (2005).

14-301-106. Sidewalks, curbing, and guttering in cities of the first class — Exceptions.

(a) In order to better provide for the public welfare, safety, comfort, and convenience of the inhabitants of cities of the first class, the council of any city of the first class, by ordinance, resolution, or order, shall have the power to:

(1) Compel the owners of any property abutting its streets or public squares to build, rebuild, maintain, and repair foot pavements or sidewalk improvements, curbing, and guttering there along and to designate the kind of sidewalk, curbing, and guttering improvements to be made, the kind of material to be used, the specifications to be followed, and the time within which such improvement is required to be completed; and

(2) Provide that:

(A) If the owner of the property shall fail or refuse to comply with the provisions thereof, in the manner and within the time therein prescribed, the cities may contract with some suitable person for the construction, reconstruction, or repair of the sidewalk, curbing, or guttering, on the best terms that can be made and in the manner to be prescribed in the ordinance, resolution, or order after giving reasonable notice to the owner or agent in charge of the property of an intention to do so; and

(B) The cities may pay that person for so constructing, reconstructing, or repairing the sidewalk, curbing, or guttering and to provide that the amount so paid by the cities, together with a six percent (6%) penalty added thereto, shall constitute a charge against the owner of the property and shall be a lien on the property from the date of the commencement of the work, the charge and lien to be assignable by the city, the charge to be recovered in an ordinary suit against the owner by the city or its assignee, or the lien to be foreclosed by the city or its assignee by suit in equity in the courts having jurisdiction of suits for the enforcement of liens upon real property, for the condemnation and sale of the property for the payment of the sums so paid by the city, together with the interest, penalty, and cost of suit, the suit in equity to be brought in the manner and under the terms now provided by law for the foreclosure of property by improvement districts, so far as applicable.

(b) Nothing contained in this section shall be construed as repealing § 14-54-104 or as preventing cities of the first class from proceeding in any other manner provided by existing laws.

History. Acts 1909, No. 136, § 1, p. 9944; A.S.A. 1947, § 19-3806; Acts 419; C. & M. Dig., § 7748; Pope's Dig., 1995, No. 555, § 1.

14-301-113. Prohibition on adverse possession of alleys, streets, or public parks — Validity of prior deeds.

CASE NOTES

ANALYSIS

Abatement of Encroachment.
Dedication.

Abatement of Encroachment.

Where city was not a party to action to compel removal of fence from an alley, an abutting landowner was not entitled to seek abatement of the fence in his own right, except on allegation and proof that he had suffered special damage as a result of the encroachment, which was not common to the public in general. *Hicks v.*

Flanagan, 30 Ark. App. 53, 782 S.W.2d 587 (1990).

Dedication.

When the first lot was sold in reference to a plat recorded and dedicated in 1917, the streets became irrevocably dedicated and this section and § 22-1-201 prohibiting adverse possession of public property, which were enacted prior to defendants' purchase of their property, prohibit defendants from adversely possessing the street. *Mathis v. Brashear*, 34 Ark. App. 194, 807 S.W.2d 666 (1991).

SUBCHAPTER 3 — VACATING STREETS AND ALLEYS FOR PUBLIC USE GENERALLY

14-301-301. Power and authority to vacate.

CASE NOTES

ANALYSIS

Applicability.
Proper Authority.

Applicability.

Where the alley had never been platted, filed of record, or dedicated to the city and the written consent of the abutter had not been obtained as provided in § 14-301-303, the city had no authority to close an alley under this section; therefore, the 30-day statute of limitations in § 14-301-305 was not applicable to this ordinance. *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

Proper Authority.

Trial court did not err in deciding that § 14-54-303 was controlling for the town to vacate a street, because an incorporated town's ability to vacate a street under § 14-54-303 was independent, and §§ 14-301-301 to 14-301-303 had no application when an incorporated town used its authority under § 14-54-303. *Riley v. Town of Higginson*, 2009 Ark. App. 294, 307 S.W.3d 34 (2009).

Cited: *Thomas v. City of Little Rock*, 52 Ark. App. 24, 914 S.W.2d 328 (1996).

14-301-302. Petition to vacate — Notice of hearing.

CASE NOTES

Proper Authority.

Trial court did not err in deciding that § 14-54-303 was controlling for the town to vacate a street, because an incorporated town's ability to vacate a street under § 14-54-303 was independent, and

§§ 14-301-301 to 14-301-303 had no application when an incorporated town used its authority under § 14-54-303. *Riley v. Town of Higginson*, 2009 Ark. App. 294, 307 S.W.3d 34 (2009).

14-301-303. Hearing — Written consent of abutting owners.**CASE NOTES****ANALYSIS**

Abutting Property Owners.
Proper Authority.

Abutting Property Owners.

Where the alley had never been platted, filed of record, or dedicated to the city and the written consent of the abutter had not been obtained as provided in this section, the city had no authority to close alley under § 14-301-301; therefore, the 30-day statute of limitations in § 14-301-305 was not applicable to this ordinance. *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

Whether the appellants were the owners of abutting property was an issue of material fact that should have been tried, and the chancellor erred in dismissing the appellants' complaint where (1) the appellants owned the property that abutted the north end of a street and the appellees owned the property that abutted the south

end of the street, (2) the appellees sought to have the south 10 feet of the street vacated and abandoned, and (3) although the appellants' ingress and egress would not be blocked by the closing, the portion of the street abutting their property would be been narrowed, which they claimed would have an adverse effect on the use of their property. *Holliman v. Liles*, 72 Ark. App. 169, 35 S.W.3d 369 (2000).

Proper Authority.

Trial court did not err in deciding that § 14-54-303 was controlling for the town to vacate a street, because an incorporated town's ability to vacate a street under § 14-54-303 was independent, and §§ 14-301-301 to 14-301-303 had no application when an incorporated town used its authority under § 14-54-303. *Riley v. Town of Higginson*, 2009 Ark. App. 294, 307 S.W.3d 34 (2009).

Cited: *Thomas v. City of Little Rock*, 52 Ark. App. 24, 914 S.W.2d 328 (1996).

14-301-304. Ordinance vacating street or alley.**CASE NOTES**

Cited: *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

14-301-305. Suit to reject ordinance — Evidence of consent.**CASE NOTES****ANALYSIS**

Res Judicata.
Statute of Limitations.

Res Judicata.

Decision concerning the validity of one ordinance under § 14-301-301 regarding the closing of an alley was not res judicata with respect to the validity of second ordinance enacted pursuant to § 14-54-104. *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

Statute of Limitations.

Where the alley had never been platted, filed of record, or dedicated to the city and the written consent of the abutter had not been obtained as provided in § 14-301-303, the city had no authority to close this alley under § 14-301-301; therefore, the 30-day statute of limitations in this section was not applicable to this ordinance. *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

If the statutory conditions have not been met when a city council passes an

ordinance that closes a portion of a street, then the 30 day statute of limitations does not apply. *Holliman v. Liles*, 72 Ark. App. 169, 35 S.W.3d 369 (2000).

14-301-306. Ownership of street or alley vesting in abutting owners — Pending suits unaffected.

CASE NOTES

Vesting of Ownership.

This section does not automatically vest the fee to an abandoned highway in the owners of the properties on each side of the alley; whether a property owner's reversionary interest, upon abandonment of

a highway, extends to the center of the highway or to the entire highway depends upon whether he or she contributed land on one side of the highway only or on both sides. *Kralicek v. Chaffey*, 67 Ark. App. 273, 998 S.W.2d 765 (1999).

SUBCHAPTER 4 — CLOSURE OF ALLEYS TO BUILD SCHOOLS, HOSPITALS, ORPHANAGES, OR CHURCHES

14-301-403. Hearing — Closure ordinance.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Lost in Translation: *Combs v. City of Springdale*, An Overview of the Ins and Outs of Appeals

Procedure for Administrative Decisions by Local Governments, 61 Ark. L. Rev. 351.

CHAPTER 304

PARKING AUTHORITIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REVENUE BONDS. [REPEALED.]

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-304-102. Definitions.

14-304-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Automobile" means and includes any vehicle which is self-propelled, including, but not limited to, passenger cars, trucks, vans, and buses; and

(2) "Public off-street automobile parking facilities" means accommodations provided, with or without charge, by public authority for the parking of automobiles off the street or highway and open to public use and may:

(A) Consist of lots, garages, or other structures and accessories; and

(B) Be surface facilities or facilities above or below the ground.

History. Acts 1949, No. 468, § 2; A.S.A. 1947, § 19-4902; Acts 1993, No. 832, § 1.

SUBCHAPTER 2 — REVENUE BONDS

SECTION.

14-304-201 — 14-304-210. [Repealed.]

14-304-201 — 14-304-210. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1997, No. 214, § 1. The subchapter was derived from the following sources:

14-304-201. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-202. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; 1975, No. 225, § 5; 1981, No. 425, § 5; A.S.A. 1947, § 19-4907.

14-304-203. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-204. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-205. Acts 1949, No. 468, § 7;

1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-206. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-207. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-208. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-209. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-210. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

SUBTITLE 19. ROADWAYS, BRIDGES, AND PARKING IMPROVEMENT DISTRICTS

CHAPTER 317

RURAL ROAD IMPROVEMENT DISTRICTS

SECTION.

14-317-134. Changing assessment of ben-

efits when property is transferred.

14-317-134. Changing assessment of benefits when property is transferred.

(a)(1) When any owner of real property located in a road improvement district created under this chapter notifies any member of the board of directors of the improvement district by certified mail, return receipt requested, that the property owner has transferred ownership of all or any part of the property, the board shall instruct the county official in possession of the tax books of the county within thirty (30) calendar days after the notice was mailed as to:

(A) The change of ownership; and

(B) If the property was divided, the amount of assessment of benefits levied against each resulting portion of the property.

(2)(A)(i) At the same time the real property owner notifies a board member under subdivision (a)(1) of this section, the property owner shall also notify the county clerk of the county in which the property is located.

(ii) The notice shall indicate the identity of the board member notified and the date the notice is mailed.

(B) If the county clerk is not in possession of the tax books of the county when the notice is received, the county clerk shall forward the notice to the county official in possession of the tax books of the county.

(b) If the county official in possession of the tax books of the county does not receive instructions from the improvement district board as required under subsection (a) of this section, the county official may reapportion the assessment of benefits in an equitable manner and change the tax books of the county to reflect the change in ownership.

History. Acts 2001, No. 79, § 1.

SUBTITLE 20. PUBLIC TRANSIT SYSTEMS GENERALLY

CHAPTER 334

PUBLIC TRANSIT SYSTEMS GENERALLY

CASE NOTES

Cited: Salley v. Central Ark. Transit
Auth., 326 Ark. 804, 934 S.W.2d 510
(1996).

14-334-104. Authority as public corporation.

CASE NOTES

Cited: Salley v. Central Ark. Transit
Auth., 326 Ark. 804, 934 S.W.2d 510
(1996).

SUBTITLE 22. AIRPORT FACILITIES GENERALLY

CHAPTER 356

GENERAL PROVISIONS

SECTION.

14-356-102. Use — Exclusively public.

Effective Dates. Acts 1995, No. 438, § 5: Feb. 24, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need to clarify current law relating to the use of airports owned and operated by municipalities, counties, and other public agencies as being exclusively public and relating to the exemption from ad valorem taxation of such airport property,

and that the provisions of this act are designed to accomplish these purposes and are immediately needed. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-356-102. Use — Exclusively public.

(a) The ownership, operation, and management of municipal airports, county airports, municipal airports operated pursuant to the Airport Commission Act, §§ 14-359-101 — 14-359-120, airports in border municipalities operated pursuant to the Municipal Airports Act, § 14-361-101 et seq., and regional airports operated pursuant to the Regional Airport Act, §§ 14-362-101 — 14-362-129, and their related properties and facilities, including without limitation, runways, hangars, terminal facilities, and suitable areas or space which are made available to those who are willing and otherwise qualified to offer transportation services to the public or support services to aircraft operators, all as may be necessary or desirable for the servicing of aircraft in commercial or general aviation or for the comfort and accommodation of air travelers traveling in commercial or general aviation, are vital to the economic welfare of the State of Arkansas and its people, and such airports and their related properties and facilities are declared and confirmed to be used exclusively for public purposes.

(b) All airport property and related properties and facilities owned by a municipality, county, or other public agency for the purposes enumerated in this section are declared to be acquired and used exclusively for public and governmental purposes and as a matter of public necessity and shall be exempt from ad valorem taxation to the same extent as other property used exclusively for public purposes.

History. Acts 1995, No. 438, § 1.

Rock v. Pulaski County, 332 Ark. 578, 968 S.W.2d 582 (1998).

Publisher's Notes. This section was held unconstitutional in City of N. Little

CASE NOTES

Constitutionality.

This section is unconstitutional: a per se determination by the General Assembly that certain private property is actually used exclusively for public purposes, and is thus exempt from tax. Such determina-

tion is a judicial function performed only after appropriate fact-finding by a trial court. City of N. Little Rock v. Pulaski County, 332 Ark. 578, 968 S.W.2d 582 (1998).

CHAPTER 359

MUNICIPAL AIRPORT COMMISSIONS

SECTION.

14-359-104. Creation of commission.

14-359-105. Appointment of commissioners.

14-359-109. Authority of commissioners.

SECTION.

14-359-115. Additional powers of commissioners.

14-359-121. Term of members.

A.C.R.C. Notes. References to "this chapter" in §§ 14-359-101 to 14-359-120 may not apply to § 14-359-121 which was enacted subsequently.

Effective Dates. Acts 2005, No. 674, § 3: Mar. 9, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that membership of a municipal airport commission in larger Arkansas cities is unnecessarily restricted; that increasing the number of commission members to that of commissions in smaller cities will better equip the commission to address the needs of the municipal airports; and that this act is immediately necessary in order to permit municipal airport commissions to begin the process of selecting additional members. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period

of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 334, § 3: Mar. 18, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that some tolls and fees being charged by airports in the state are much higher than the local sales tax rate; that this is inequitable; and that this act is immediately necessary because there is a high potential for an illegal exaction lawsuit against these airports. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-359-104. Creation of commission.

(a) Any city affected by and desiring to avail itself of the benefits of this chapter shall enact by a majority vote of the elected and qualified members of its city council an ordinance creating an airport commission to be composed of seven (7) citizens who are qualified electors of the state.

(b)(1) At least one (1) of the members shall be fully experienced in aviation, holding some type of pilot aeronautical rating.

(2) If there is not any citizen experienced in aviation holding some type of pilot's aeronautical rating who is available or willing to serve on the commission, then the city council may waive this requirement.

(c) No more than one (1) member of the commission may have financial dealings or interests in an aeronautical enterprise while a member of the commission.

History. Acts 1949, No. 53, § 3; 1981, No. 48, § 1; A.S.A. 1947, § 74-503; Acts 1997, No. 1078, § 1; 2005, No. 674, § 1; 2009, No. 568, § 1.

Amendments. The 2009 amendment rewrote (c).

14-359-105. Appointment of commissioners.

(a)(1) The commissioners shall be appointed by the mayor and confirmed by a three-fourths ($\frac{3}{4}$) vote of the elected and qualified members of the city council.

(2) In municipalities located in a metropolitan statistical area designated by the United States Census Bureau having a population of one million (1,000,000) or more according to the most recent federal decennial census, the commissioners shall be appointed by the mayor and confirmed by a simple majority vote of the elected and qualified members of the city council.

(b)(1) The commissioners first appointed and confirmed shall serve terms of one (1), two (2), three (3), four (4), and five (5) years, with two (2) commissioners serving terms of four (4) years and two (2) commissioners serving terms of five (5) years. The terms shall be designated by the mayor.

(2) Upon the expiration of their respective terms, their successors shall be appointed by the mayor, subject to the approval of the council, for terms of five (5) years.

(c) The commissioners shall file the oath required by law in the State of Arkansas.

(d) For municipal airport commissions in existence on August 1, 1997, the initial terms of the two (2) new members shall be as follows:

(1) One (1) new member shall serve an initial term of four (4) years; and

(2) One (1) new member shall serve an initial term of five (5) years.

(e) For municipal airport commissions with five (5) members in existence on March 9, 2005, the initial terms of the two (2) new members shall be as follows:

(1) One (1) new member shall serve an initial term of four (4) years; and

(2) One (1) new member shall serve an initial term of five (5) years.

History. Acts 1949, No. 53, § 4; A.S.A. 1947, § 74-504; Acts 1997, No. 1078, §§ 2, 3; 2005, No. 674, § 2; 2009, No. 73, § 1.

Amendments. The 2009 amendment added (a)(2).

14-359-109. Authority of commissioners.

(a)(1) The commissioners appointed under this chapter shall have full and complete authority to manage, operate, improve, extend, and maintain the municipal airport and its related properties and facilities.

(2) The commissioners shall have full and complete charge of the airport and its related properties and facilities, including the right to employ or remove any and all assistants and employees of whatsoever nature, kind, or character and to fix, regulate, and pay their salaries.

(b)(1) It is the intention of this chapter to vest in the commissioners unlimited authority to operate, manage, maintain, improve, and extend the municipally owned airport and its related properties and facilities, and to have full and complete charge of it, including without limitation the authority to charge and collect tolls and fees from vehicles accessing or departing from the airport, to make reasonable tolls and fees in accordance with industry standards, and to make reasonable classifications of vehicles for this purpose.

(2)(A) The tolls or fees levied for use of airport roads by private off-facility parking services at an airport located in a county with a population of at least three hundred sixty thousand (360,000) and in a city with a population of at least one hundred seventy-five thousand (175,000) according to the most recent federal decennial census shall not exceed the local sales tax rate of the municipality in which the airport is located.

(B) Private off-facility parking services shall have full access to drop off and pick up airport passengers and the same queuing access as all commercial shuttles, limos, taxi cabs, airport-owned vans or buses, and valet services.

(C) For an airport located in a county with a population of at least three hundred sixty thousand (360,000) and in a city with a population of at least one hundred seventy-five thousand (175,000) according to the most recent federal decennial census, tolls and fees fixed by the authority shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State of Arkansas.

History. Acts 1949, No. 53, § 6; A.S.A. 1947, § 74-506; Acts 2011, No. 334, § 2.

Amendments. The 2011 amendment

added “including without limitation ... for this purpose” at the end of (b)(1); and added (b)(2).

CASE NOTES

ANALYSIS

Immunity.
Scope of Authority.

Immunity.

The Commission acts as an agency of the city with the power and authority to operate, manage, maintain, and improve the airport unless a statute explicitly pro-

vides otherwise; thus, the Commission is entitled to be treated as a municipality for immunity purposes. *Four T's, Inc. v. Little Rock Mun. Airport Comm'n*, 108 F.3d 909 (8th Cir. 1997).

A clearly articulated and affirmatively expressed state policy exists that grants the Commission unlimited authority to formulate and to impose concession fees on rental car companies that operate from

the airport terminal; therefore, the Commission is entitled to state action immunity from antitrust liability. *Four T's, Inc. v. Little Rock Mun. Airport Comm'n*, 108 F.3d 909 (8th Cir. 1997).

Scope of Authority.

This section clearly and affirmatively grants the Commission unlimited author-

ity to operate the airport, its facilities and related properties, which would include renting counter space and parking spaces and imposing concession fees. *Four T's, Inc. v. Little Rock Mun. Airport Comm'n*, 108 F.3d 909 (8th Cir. 1997).

14-359-115. Additional powers of commissioners.

(a) The commissioners shall, in addition to the other powers enumerated in this chapter, have such other and further powers as are by law given to the city council of any city.

(b) They shall be governed by all existing statutes pertaining to the duties of city councils.

History. Acts 1949, No. 53, § 11; A.S.A. 1947, § 74-511; Acts 1993, No. 403, § 8.

14-359-121. Term of members.

For municipal airport commissions in existence on August 1, 1997, the initial term of the two (2) new members shall be as follows: one (1) new member shall serve an initial term of four (4) years; and one (1) new member shall serve an initial term of five (5) years.

History. Acts 1997, No. 1078, § 3.
A.C.R.C. Notes. References to "this chapter" in §§ 14-359-101 to 14-359-120

may not apply to this section which was enacted subsequently.

CHAPTER 360

MUNICIPAL AIRPORTS GENERALLY

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Fifteenth Annual Survey of Arkansas Law, 15 U. Ark. Little Rock L.J. 427.

SUBCHAPTER 1 — GENERAL PROVISIONS

14-360-101. Municipal airports authorized.

CASE NOTES

Eminent Domain.

The law of Arkansas gives one municipality eminent domain over land in an-

other municipality. *Cowger v. State, Dep't of Aeronautics*, 307 Ark. 92, 817 S.W.2d 427 (1991).

14-360-102. Acquisition of property.**CASE NOTES****Eminent Domain.**

The law of Arkansas gives one municipality eminent domain over land in another municipality. *Cowger v. State, Dep't of Aeronautics*, 307 Ark. 92, 817 S.W.2d 427 (1991).

Cited: *Bryant v. Springhill Water & Sewer Servs., Inc.*, 295 Ark. 333, 750 S.W.2d 61 (1988).

SUBCHAPTER 3 — IMPROVEMENTS**14-360-302. Authority to erect.****CASE NOTES****Leases to Private Businesses.**

Although it is convenient for patrons of the airport to have certain private businesses located on airport property, their primary purposes are private, and, conse-

quently, the tracts leased from the airport by the private businesses are not exempt from ad valorem county taxation. *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995).

14-360-304. Operation after completion.**CASE NOTES****Taxation.**

Although it is convenient for patrons of the airport to have certain private businesses located on airport property, their primary purposes are private, and, conse-

quently, the tracts leased from the airport by the private businesses are not exempt from ad valorem county taxation. *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995).

CHAPTER 361**AIRPORTS IN BORDER MUNICIPALITIES****SECTION.**

14-361-107. Operation and use privileges.

14-361-107. Operation and use privileges.

(a) **UNDER MUNICIPAL OPERATION.** In operating an airport or air navigation facility owned, leased, or controlled by a municipality, the municipality, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to § 14-361-117, may enter into contracts, leases, and other arrangements with any persons:

(1) Granting the privilege of using or improving the airport or air navigation facility, or any portion or facility thereof, or space therein for commercial purposes;

(2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at that airport or air navigation facility; or

(3)(A) Making available services to be furnished by the municipality or its agents at that airport or navigation facility.

(B) In each case, the municipality may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(b) UNDER OTHER OPERATION. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to § 14-361-117, a municipality, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person, for a term not to exceed forty (40) years, the privilege of operating as agent of the municipality, or otherwise, any airport owned or controlled by the municipality. No person shall be granted any authority to operate the airport other than a public airport or to enter into any contracts, leases, or other agreements in connection with the operation of the airport which the municipality might not have undertaken under subsection (a) of this section.

History. Acts 1953, No. 128, § 4; A.S.A. 1947, § 74-604; Acts 1997, No. 334, § 1.

14-361-124. Tax exemptions.

CASE NOTES

Leases to Private Businesses.

Although it is convenient for patrons of the airport to have certain private businesses located on airport property, their primary purposes are private, and, conse-

quently, the tracts leased from the airport by the private businesses are not exempt from ad valorem county taxation. *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995).

CHAPTER 362
REGIONAL AIRPORTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. CONTRACTS FOR EFFECTIVE BOND INTEREST RATES.

Publisher's Notes. Because of the enactment of subchapter 2 of this chapter by Acts 2003, No. 1175, § 1, the existing

provisions of this chapter have been designated as subchapter 1.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-362-102. Definitions.
- 14-362-103. Establishment of authorities.
- 14-362-105. Appointment of board.
- 14-362-106. Vacancy on board.
- 14-362-108. Facilities authorized.
- 14-362-109. Powers of authority generally.
- 14-362-114. Issuance of revenue bonds — Execution.
- 14-362-115. Issuance of revenue bonds — Obligation of authority.

SECTION.

- 14-362-122. Use of surplus funds.
- 14-362-124. Accounts and reports.
- 14-362-125. County, municipal, and state authority.
- 14-362-127. Sale of assets.
- 14-362-130. Authorized investors.
- 14-362-131. Construction.
- 14-362-132. Exemption from annexation and municipal regulation.

Effective Dates. Acts 1992 (1st Ex. Sess.), Nos. 56 and 63, § 18: Mar. 19, 1992, and Mar. 20, 1992, respectively. Emergency clause provided: "It is hereby found and determined that there is an immediate need to facilitate the acquisition and operation of major airport facilities by regional airport authorities for the purpose of securing a developing industry within the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1245, § 6: Apr. 9, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act clarifies the definition of 'governing body' as used in the Revenue Bond Act of 1987 and that this act is immediately necessary to clarify the law and to avoid undue hardship and potential economic loss to governing bodies. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1349, § 7: Apr. 12, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the current laws relating to the authority and responsibilities of regional airport authorities are unduly restrictive and render such authorities incapable of carrying out their responsibilities as prescribed by law; that this act is designed to clarify and expand the powers of such authorities and to thereby enable them to effectively and efficiently carry out their legal responsibilities and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1420, § 5: Apr. 13, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that present law is unclear as to the authority of municipalities to annex regional airport property; that the ownership and control of regional airports should remain with the regional airport authorities; that this act clarifies the law; and that this act should go into effect as soon as possible in order to pre-

vent litigation and detrimental outcomes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2011, No. 334, § 3: Mar. 18, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that some tolls

and fees being charged by airports in the state are much higher than the local sales tax rate; that this is inequitable; and that this act is immediately necessary because there is a high potential for an illegal exaction lawsuit against these airports. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-362-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Authority" means any authority created under the provisions of this chapter;

(2) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bids upon such terms and pursuant to such advertising, as the authority shall determine to be in the public interest and necessary under the circumstances existing at the time to accomplish the purposes of and authorities set forth in this chapter;

(3) "County" means any county in this state;

(4) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(5) "Facilities" or "property" or "properties" means any real property, personal property, or mixed property of any and every kind that can be used, or that will be useful, to accomplish the purposes of, and powers set forth in, this chapter including, without limiting the generality of the foregoing, rights-of-way, roads, streets, utilities, materials, equipment, fixtures, machinery, furnishings, furniture, instrumentalities, and other real, personal, or mixed property of every kind;

(6) "Governing body" means the council, board of directors, or city commission of any municipality or the county court of any county;

(7) "Lease" means to lease for such rentals, for such period or periods, and upon such terms and conditions as the authority shall determine, including, without limiting the generality of the foregoing, the granting of such renewal or extension options for such rentals, for

such periods, and upon such terms and conditions as the authority shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the authority shall determine;

(8) "Major airport facility" means a public airport with an active runway at least seven thousand feet (7,000') long;

(9) "Municipality" or "municipal corporation" means a city of the first class, a city of the second class, or an incorporated town;

(10) "Sell" means to sell for such price, in such manner, and upon such terms as the authority shall determine including, without limiting the generality of the foregoing, private or public sale; and if public, pursuant to such advertisement as the authority shall determine, sale for cash or credit payable in lump sum, or in installments over such period as the authority shall determine; and if on credit, with or without interest and at such rate or rates as the authority shall determine; and

(11) "State" means the State of Arkansas.

History. Acts 1968 (1st Ex. Sess.), No. Ex. Sess.), No. 56, § 1; 1992 (1st Ex. Sess.), No. 63, § 1.
17, § 1; 1973, No. 426, § 1; 1981, No. 425, § 3; A.S.A. 1947, § 74-216; Acts 1992 (1st

14-362-103. Establishment of authorities.

(a)(1) Any two (2) or more municipalities, any two (2) or more contiguous counties, or any one (1) or more municipalities together with any one (1) or more contiguous counties, are authorized to create and establish an authority as prescribed in this chapter for the purpose of acquiring, equipping, constructing, maintaining, and operating regional airports.

(2) No county or municipality shall participate in such authority unless and until its governing body so provides by ordinance and enters into an agreement with the other participating governmental units establishing the terms and conditions for the operation of the authority within the limitations provided in this chapter and such other laws of the State of Arkansas as may be applicable.

(b) The state may join in the creation and establishment of any authority if the regional airport to be acquired, equipped, constructed, maintained, or operated is a major airport facility. The state shall not participate in any authority unless and until the Governor so provides by proclamation and enters into the agreement with the other participating governmental units. The agreement with the other participating governmental units shall be executed by the Governor.

(c) To the extent that it is consistent with this chapter, the agreement shall specify the information provided for in § 25-20-104(c).

(d) The agreement shall be filed with the Secretary of State.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 2; 1973, No. 426, § 2; A.S.A. 1947, § 74-217; Acts 1992 (1st Ex. Sess.), No. 56, § 2; 1992 (1st Ex. Sess.), No. 63, § 2.

Publisher's Notes. Acts 1992 (1st Ex. Sess.), Nos. 56 and 63, § 14, provided: "Any existing regional airport authority previously created in conformance with

the provisions then contained in the Regional Airport Act may continue as originally organized notwithstanding the provisions of this act.”

Cross References. Multicounty Airport and Riverport Financing Act, § 26-81-101 et seq.

14-362-105. Appointment of board.

(a) Subject to such limitations as may be contained in the agreement provided for in § 14-362-103, the management and control of each authority and its property, operations, business, and affairs shall be lodged in a board of not less than six (6) nor more than twenty-four (24) persons who shall be appointed for terms of six (6) years each as hereinafter provided.

(b) The number of members that each of the participating governmental units is entitled to appoint to the board shall be set forth in the agreement provided for in § 14-362-103. However, each of the participating governmental units shall be entitled to appoint at least one (1) member to the board and, if the state is a participant in the authority, the state shall be entitled to appoint a majority of the members of the board. Appointments shall be made by the mayor of each participating municipality, the county judge of each participating county, and the Governor.

(c) The members of the authority shall have staggered terms, as provided in the agreement establishing the authority, as follows: One-third ($\frac{1}{3}$) of the members for six-year terms; one-third ($\frac{1}{3}$) of the members for four-year terms; and one-third ($\frac{1}{3}$) of the members for two-year terms. Thereafter, all appointments shall be for six-year terms.

(d) All members of the board appointed by the participating municipalities and counties shall be bona fide residents and qualified electors of the county or municipality which the members represent. All members of the board appointed by the state shall be bona fide residents of the state.

History. Acts 1968 (1st Ex. Sess.), No. 222; Acts 1992 (1st Ex. Sess.), No. 56, § 3; 17, §§ 5, 7; A.S.A. 1947, §§ 74-220, 74-222; Acts 1992 (1st Ex. Sess.), No. 63, § 3.

14-362-106. Vacancy on board.

(a) If any member of an authority dies, resigns, is removed, or for any other reason ceases to be a member of the authority, the mayor, the county judge, or the Governor, as appropriate to the governmental unit which the member represented, shall appoint another person to fill the unexpired portion of the term of the member.

(b) A member of the authority once qualified shall not be removed during his or her appointment except for cause by the mayor, the county judge, or the Governor, as appropriate, which appointed him or her, or upon such other conditions as shall be set forth in the agreement establishing the authority.

History. Acts 1968 (1st Ex. Sess.), No. (1st Ex. Sess.), No. 56, § 4; 1992 (1st Ex. Sess.), No. 63, § 4.
17, § 6; A.S.A. 1947, § 74-221; Acts 1992

14-362-108. Facilities authorized.

Each authority is authorized and empowered to acquire, equip, construct, maintain, and operate a regional airport or landing field and appurtenant facilities so located to best serve the region in which they are located. Each authority in which the state is a participant is further authorized and empowered to acquire, equip, construct, maintain, and operate industrial, warehouse, distribution, and related types of facilities, including education, training, office and support facilities, located at a major airport facility for the purpose of securing and developing industry within the state.

History. Acts 1968 (1st Ex. Sess.), No. (1st Ex. Sess.), No. 56, § 5; 1992 (1st Ex. Sess.), No. 63, § 5.
17, § 4; A.S.A. 1947, § 74-219; Acts 1992

14-362-109. Powers of authority generally.

Each authority is given power and authority as follows:

(1) To make and adopt all necessary bylaws, rules, and regulations for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees, and to employ and fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, governmental department, firm, or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing, and operating a public airport to best serve the region in which it is located;

(4) To delegate any authority given to it by law to any of its officers, committees, agents, or employees;

(5) To apply for, receive, and use grants-in-aid, donations, and contributions from any source, including, but not limited to, the federal government or any agency thereof and the State of Arkansas or any agency thereof and to accept and use bequests, devises, gifts, and donations from any person, firm, or corporation;

(6) To acquire lands and hold title to those lands in its own name;

(7) To acquire, own, hold, lease as lessor or as lessee, sell, encumber, dispose of, or otherwise deal in and with any facilities or real, personal, or mixed property, wherever located;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport properties and facilities in connection with the issuance of mortgage bonds;

(9) To raise funds by the issuance and sale of revenue bonds in the manner and according to the terms set forth in this chapter;

(10) To expend its funds in the execution of the powers and authorities given in this chapter and to invest and reinvest any of its funds pending need therefor;

(11) To apply for, receive, and use loans, grants, donations, technical assistance, and contributions from any regional or area commissions that may be established and any agency of the federal government or the State of Arkansas;

(12)(A) To constitute the authority or a committee of the authority as improvement district commissioners and to create and operate an improvement district composed of the area encompassed within the jurisdictions of the participating governing bodies upon the petition of persons claiming to be two-thirds ($\frac{2}{3}$) in value of the owners of real property in the area, as shown by the last county assessment.

(B) The improvement district shall be for the purpose of financing the construction, reconstruction, or repair of the regional airport and its facilities.

(C) The creation and operation of an improvement district shall be, to the extent consistent with this chapter, in accordance with the procedures established by the laws of this state for the creation and operation of municipal improvement districts;

(13)(A) To enforce all rules, regulations, and statutes relating to its airports, including airport zoning regulations.

(B) In this connection, the authority is empowered and authorized to exercise the powers and privileges of the signatory parties under § 14-363-201 et seq. and the board of directors of the authority is designated by the signatory parties as the zoning board for the purposes and powers under these provisions;

(14) To levy and collect a tax on aviation fuel sold at an airport or airports of the authority;

(15) To plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, and regulate its airports and auxiliary services and facilities and to establish minimum building codes and regulations;

(16)(A) To protect and police the airports of the authority, in cooperation with the law enforcement agencies and officers having jurisdiction in the area where the facilities of the authority are located, and to appoint one (1) or more persons to be designated by the authority as an authority law enforcement officer to aid and supplement the law enforcement agencies of this state in the protection of the persons and property of the authority, the authority's passengers, and the authority's employees.

(B)(i) Each authority law enforcement officer shall have and exercise throughout the property of the authority the power to make arrests for the violations of any law on the property of the authority and to arrest persons, whether on or off the authority's property, for the violation of any law on the authority's property, under the same conditions under which other law enforcement officers or other peace officers may by law make arrests and shall have the authority to carry weapons for the reasonable purposes of the office of authority policemen.

(ii) Provided, however, each authority law enforcement officer shall be eligible for certification by the Arkansas Law Enforcement Training Academy and shall also be subject to the same certification standards as other law enforcement officers, including time limits for certification after being hired;

(17)(A) To promulgate rules and regulations and to amend or change them from time to time as shall be deemed necessary, providing for the operation and parking of motor vehicles upon the grounds, streets, drives, and alleys under its control, including, but not limited to, regulations:

- (i) Limiting the rate of speed;
- (ii) Assigning parking spaces and designating parking areas and their uses and collecting rent for those spaces;
- (iii) Prohibiting parking as it deems necessary;
- (iv) Removing vehicles parked in violation of authority rules and regulations or ordinances, at the expense of the violator, who shall pay the expense before the vehicle is released; and
- (v) Collecting, under an established system, administrative charges for violations of authority rules and regulations governing motor vehicles, their operation, and parking.

(B) However, an administrative finding of violation may be appealed to the appropriate municipal court where the matter shall be heard de novo.

(C) Rules and regulations, together with any amendments thereto, which from time to time may be adopted by an authority for the regulation of operation and parking of motor vehicles shall be recorded in the official minutes of the authority board and shall be printed with copies available at convenient locations in the terminal building.

(D) Speed limits shall be posted at reasonable intervals, and traffic and parking directions and prohibitions shall be indicated by signs.

(E)(i) From and after the promulgation of the rules and regulations, it shall be unlawful for any person to operate or to park a motor vehicle in violation thereof.

(ii) Any person violating or refusing to comply with the rules and regulations shall be subjected to a reasonable administrative charge stated in the promulgated rules and regulations.

(F)(i) Persons violating authority rules and regulations promulgated under this section, at the option of the authority law enforcement officer, shall be charged under the authority's system of charges or summoned to appear before any court of competent jurisdiction to be dealt with according to law.

(ii) A person adversely affected by any administrative determination as described shall have a right to appeal therefrom to the appropriate municipal court where the matter shall be heard de novo.

(G) Any fines, penalties, and forfeitures imposed by any court pursuant to this section shall be paid into the airport authority treasury for airport authority purposes, and any court costs imposed and collected shall be disbursed pursuant to § 16-10-305;

(18) To plan, establish, develop, construct, enlarge, improve, and maintain intermodal access roads providing service to the airport, together with related auxiliary services and facilities;

(19)(A)(i) To fix, revise, charge, and collect tolls, access fees, ground transportation fees, or other fees for vehicular use of any roads or other facilities owned by or providing service to the airport and to contract with any person, partnership, association, corporation, or organization desiring the use of any part of those roads, including the right-of-way adjoining the paved portion for placing their own telephone, telegraph, electric, light, or power lines, motor fuel service stations, garages, restaurants, and other facilities or for any other purpose, and to fix the terms, conditions, rents, and rates of charges for that use.

(ii) However, public utilities, rural cooperatives, political subdivisions, and pipeline companies may construct and maintain crossings of roads with their facilities, without charge, if the facilities are constructed and maintained in compliance with reasonable requirements of public safety and all costs of restoring the project to as good a condition as it was before being disturbed are paid by the owners of the facilities.

(B)(i) The tolls and fees may be charged and collected from vehicles accessing or departing from the airport, and the authority is empowered to make reasonable tolls and fees in accordance with industry standards and to make reasonable classifications of vehicles for this purpose.

(ii)(a) The tolls or fees levied for use of airport roads by private off-facility parking services at an airport located in a county with a population of at least three hundred sixty thousand (360,000) and in a city with a population of at least one hundred seventy-five thousand (175,000) according to the most recent federal decennial census shall not exceed the local sales tax rate of the municipality in which the airport is located.

(b) Private off-facility parking services shall have full access to drop off and pick up airport passengers and the same queuing access as all commercial shuttles, limos, taxi cabs, airport-owned vans or buses, and valet services.

(C) For an airport located in a county with a population of at least three hundred sixty thousand (360,000) and in a city with a population of at least one hundred seventy-five thousand (175,000) according to the most recent federal decennial census, tolls and fees fixed by the authority shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State of Arkansas;

(20)(A) To levy and collect a tax in an amount not to exceed the maximum amount per passenger allowed by the federal government on the boarding or disembarking of aircraft at the airport or airports of the authority.

(B) The tax shall be levied upon and collected from the passengers boarding or disembarking from the aircraft or the airlines operating

the aircraft, and the authority is empowered to make reasonable classifications of passengers for this purpose;

(21) To receive real and personal property from the United States for airport and related purposes by donation, purchase, lease, or otherwise, subject to such conditions and requirements relating thereto as the United States Government may require and to which the authority may agree;

(22) To apply to the proper authorities of the United States Government pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones within the area of jurisdiction of the member municipalities or counties, or both, and to establish, operate, and maintain those foreign trade zones;

(23) To promote, advertise, and publicize the authority and its facilities, to provide information to shippers, operators, and other commercial interests, and to represent and promote the interests of the authority; and

(24) To take such other action, not inconsistent with law, as may be necessary or desirable to carry out the powers and authorities conferred by this chapter and the intent and purposes of it.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 9; 1973, No. 426, §§ 3-6; A.S.A. 1947, § 74-224; Acts 1992 (1st Ex. Sess.), No. 56, § 6; 1992 (1st Ex. Sess.), No. 63, § 6; 1997, No. 1245, § 1; 1999, No. 1349, § 1; 2001, No. 772, § 1; 2011, No. 334, § 1.

Amendments. The 2011 amendment

inserted (19)(B)(ii); and substituted "For an airport located in a county with a population of at least three hundred sixty thousand (360,000) and in a city with a population of at least one hundred seventy-five thousand (175,000) according to the most recent federal decennial census" for "The" in (19)(C).

14-362-114. Issuance of revenue bonds — Execution.

(a)(1) The bonds shall be executed by the manual or facsimile signatures of the chair and secretary of the authority.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(b) The coupons attached to the bonds may be executed by the facsimile signature of the chair of the authority.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225; Acts 1992 (1st Ex. Sess.), No. 56, § 7; 1992 (1st Ex. Sess.), No. 63, § 7.

14-362-115. Issuance of revenue bonds — Obligation of authority.

(a) The revenue bonds issued under this chapter shall be obligations only of the authority and shall not be general obligations of any county, municipality, or the state.

(b)(1) In no event shall the revenue bonds constitute an indebtedness of any county, municipality, or the state within the meaning of any constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of any county, municipality, or the state within any constitutional or statutory limitation.

(c) The principal of and interest on the bonds may be secured, to the extent set forth in the resolution or indenture securing the bonds, by a pledge of and payable from all or any part of revenues derived from the use of the facilities of the authority, including, without limitation:

(1) Revenues derived from rates and charges imposed and maintained for the use of the facilities of the authority;

(2) Revenues derived from taxes levied under §§ 14-362-109(14) and 14-362-109(20);

(3) Lease rentals under leases or payments under security agreements or other instruments entered into under this chapter; and

(4) Revenues derived from tolls imposed upon vehicles utilizing intermodal access roads providing service to the airport and revenues derived from related auxiliary services and facilities.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225; Acts 1992 (1st Ex. Sess.), No. 56, § 8; 1992 (1st Ex. Sess.), No. 63, § 8; 1999, No. 1349, § 2.

14-362-121. Exemption from taxation.

CASE NOTES

ANALYSIS

Construction.

Leases to Private Businesses.

Construction.

This section means that an airport authority will be exempt from paying ad valorem taxes when the land is used solely for public purposes. *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995).

Leases to Private Businesses.

Although it is convenient for patrons of the airport to have certain private businesses located on airport property, their primary purposes are private, and, consequently, the tracts leased from the airport by the private businesses are not exempt from ad valorem county taxation. *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995).

14-362-122. Use of surplus funds.

(a) If an authority should realize a surplus, whether from operating the airport or leasing it for operation, over and above the amount required for the maintenance, improvement, and operation of the airport and for meeting all required payments on its obligations, it shall set aside the reserve for future operations, improvements, and contingencies as it shall deem proper and shall then apply the residue of the

surplus, if any, to the payment of any recognized and established obligations not then due.

(b)(1) After all the recognized and established obligations have been paid and discharged in full, at the end of each fiscal year the authority shall set aside the reserve for future operations, improvements, and contingencies as prescribed in subsection (a) of this section and then pay the residue of the surplus, if any, to the counties, municipalities, and the state in direct proportion to their financial contribution.

(2) No such distribution of the residue of the surplus shall violate United States law or the terms of any deed, grant agreement, or other agreement with the United States.

History. Acts 1968 (1st Ex. Sess.), No. (1st Ex. Sess.), No. 56, § 9; 1992 (1st Ex. 17, § 15; A.S.A. 1947, § 74-230; Acts 1992 Sess.), No. 63, § 9.

14-362-124. Accounts and reports.

(a)(1) All funds received by an authority shall be deposited in such banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct.

(2)(A) Each authority shall keep strict account of all of its receipts and expenditures and each quarter shall make a report to the counties and municipalities which have made contributions.

(B)(i) The report shall contain an itemized account of its receipts and disbursements during the preceding quarter.

(ii) The report shall be made within sixty (60) days after the termination of the quarter.

(b)(1)(A) Within one hundred fifty (150) days after the end of each fiscal year, each authority shall cause an annual audit to be made by an independent certified public accountant and shall file a copy of the resulting audit report with each of the governing bodies participating in the authority.

(B) This audit shall contain an itemized statement of its receipts and disbursements for the preceding year.

(2) The books, records, and accounts of each authority shall be subject to audit and examination by any proper public official or body in the manner provided by law.

(c) The agreement provided for in § 14-362-103 may also provide for each authority to furnish the participating governing bodies copies of its annual budget for examination and approval.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 16; A.S.A. 1947, § 74-231; Acts 1999, No. 1349, § 3; 2001, No. 772, § 2.

14-362-125. County, municipal, and state authority.

(a) Counties, municipalities, and the state are authorized and empowered to appoint members of the authorities and to contribute to the

cost of acquiring, constructing, equipping, maintaining, and operating the regional airports and appurtenant facilities.

(b) Counties, municipalities, and the state are authorized and empowered to transfer and convey to the authorities property of any kind acquired by the counties, municipalities, and the state for airport purposes.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 17; A.S.A. 1947, § 74-232; Acts 1992 (1st Ex. Sess.), No. 56, § 10; 1992 (1st Ex. Sess.), No. 63, § 10.

14-362-127. Sale of assets.

(a) In the event the board shall so determine, any authority may sell all or any part of its properties and assets and distribute the proceeds among the participating municipalities, counties, and the state in the proportion each unit contributed to the authority's funds or otherwise in the manner set forth in the agreement establishing the authority, provided no authority in which the state is a participant shall sell all or substantially all of its properties or assets without the consent of the Governor.

(b) No sale of properties or assets and no distribution of proceeds of such sale shall be done in a manner which violates United States law or the terms of any deed, grant agreement, or other agreement with the United States.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 18; A.S.A. 1947, § 74-233; Acts 1992 (1st Ex. Sess.), No. 56, § 11; 1992 (1st Ex. Sess.), No. 63, § 11.

14-362-130. Authorized investors.

Any municipality, or any board, commission, or other authority duly established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such municipality, or the board of trustees of any retirement system created by the General Assembly may, in its discretion, invest any of its funds not immediately needed for its purposes, in bonds issued under the provisions of this chapter, and bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1992 (1st Ex. Sess.), No. 56, § 12; 1992 (1st Ex. Sess.), No. 63, § 12.

14-362-131. Construction.

(a) This chapter shall be liberally construed to accomplish its intent and purposes and shall be the sole authority required for the accomplishment of its purpose.

(b) To this end:

(1) It shall not be necessary to comply with the general provisions of other laws dealing with public facilities, their acquisition, construction, leasing, encumbering, or disposition; and

(2) Section 15-5-303 shall not apply.

History. Acts 1992 (1st Ex. Sess.), No. 56, § 13; 1992 (1st Ex. Sess.), No. 63, § 13.

14-362-132. Exemption from annexation and municipal regulation.

(a) For purposes of this section, “authority” means an authority created with members from two (2) or more counties and three (3) or more cities, and the property of the authority shall be defined as the real property owned in fee simple title by the authority or property acquired in fee simple title by the authority in the future which is acquired for aviation purposes.

(b)(1) The property and operations of an authority shall be exempt from the enactment of any rules, regulations, ordinances, permit requirements, and enforcement by a municipality.

(2) A municipality may enact and collect a sales tax, a liquor tax, and a hotel, motel, and restaurant tax on the operations located on the property of the authority, but other taxes or fees enacted by a municipality pertaining to the property or operations of the authority shall require the approval of a majority vote of the board of directors of the authority.

(c) If a municipality in which the property of an authority is located merges with or is annexed or consolidated by another municipality, an authority may de-annex from the municipality upon a majority vote of the board of directors of the authority.

History. Acts 1999, No. 1420, § 1; 2007, No. 167, § 1.

Amendments. The 2007 amendment substituted “which is acquired for aviation purposes” for “which is contiguous to the property of the authority and is acquired for aviation purposes” in (a).

SUBCHAPTER 2 — CONTRACTS FOR EFFECTIVE BOND INTEREST RATES

SECTION.

14-362-201. Definitions.

14-362-202. Contracts authorized.

SECTION.

14-362-203. Payments and revenues.

14-362-204. Supplemental.

Effective Dates. Acts 2003, No. 1175, § 2: Apr. 8, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need to facilitate the issuance of revenue bonds by authorities, including the ability of au-

thorities to enter into contracts to achieve a desirable interest rate on the bond. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by

the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-362-201. Definitions.

As used in this subchapter:

(1) "Authority" means any authority created under the provisions of § 14-362-103;

(2) "Bond" means a revenue bond;

(3) "Contract for effective interest rates" means any contract to achieve a desirable effective interest rate, including, but not limited to:

(A) An investment contract;

(B) A funding agreement;

(C) An interest rate swap agreement;

(D) A currency swap agreement;

(E) A forward payment conversion agreement;

(F) A futures contract;

(G) A contract providing for payments based on levels of or changes in interest rates;

(H) A contract to exchange cash flows or a series of payments; or

(I) A contract, including options, puts or calls, issued to hedge payment rate, spread, or similar interest rate exposure; and

(4) "Revenue bond" means a revenue bond issued by, or on behalf of, an authority under the Arkansas Constitution and under an act of the General Assembly, including all bonds, notes, certificates, or other instruments or evidences of indebtedness which constitute a revenue bond as defined in Arkansas Constitution, Amendment 65.

History. Acts 2003, No. 1175, § 1.

14-362-202. Contracts authorized.

(a) In connection with revenue bonds issued by an authority, the authority may enter into a contract for effective interest rates.

(b) A contract for effective interest rates may be entered into at the time the bonds are issued or at any time while the bonds are outstanding.

(c) A contract for effective interest rates may also be entered into by authorities in connection with an agreement that secures bonds or provides liquidity for the bonds.

(d)(1) A contract for effective interest rates shall be made upon the terms and conditions established by the governing body of the authority.

(2) The contract may include terms permitting the authority to pay to or receive from a person or entity any loss of benefits under the contract upon an early termination or a default under the contract.

History. Acts 2003, No. 1175, § 1.

14-362-203. Payments and revenues.

(a) Payments required to be made by an authority under a contract for effective interest rates under this subchapter shall be payable from the same revenue source or sources from which the related bonds are payable.

(b) Revenues derived by an authority from a contract for effective interest rates shall be used for one (1) or more of the following purposes:

(1) The payment of the bond principal, bond premium, interest on the related bonds, or for amounts held in reserve for the bond payment;

(2) The payment of the authority's obligations under the contract; or

(3) Any purpose for which the related bonds were or could have been issued if the contract is authorized by the governing body of the authority in the same manner as the issuance of bonds.

History. Acts 2003, No. 1175, § 1.

14-362-204. Supplemental.

This subchapter is supplemental to all other provisions of state law governing the issuance of bonds by authorities and the investment of the bond proceeds.

History. Acts 2003, No. 1175, § 1.

CHAPTER 363

AIRPORT ZONING

SUBCHAPTER 3 — UNITED STATES AIRPORTS

14-363-307. Judicial review.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Lost in Translation: Combs v. City of Springdale, An Overview of the Ins and Outs of Appeals

Procedure for Administrative Decisions by Local Governments, 61 Ark. L. Rev. 351.

SUBTITLE 24. FENCING AND LIVESTOCK DISTRICTS

CHAPTER 386

FENCING DISTRICTS

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

14-386-114. Railroads subject to tax.

14-386-115. Order of assessment.

14-386-114. Railroads subject to tax.

(a) Every railroad company, foreign or domestic, doing business in this state and having any part of its real property situated wholly or in part in any fencing district formed in this state, whether it is formed under general or special law, shall be required to pay taxes for the benefit of any such district.

(b) The tax required in this section shall be assessed by the county court, which assessment shall be based upon the last assessment made by the Assessment Coordination Department, and each parcel of land or right-of-way owned by the railroad, and situated in any such district, shall be subject to the tax.

History. Acts 1911, No. 238, §§ 1, 2; C. & M. Dig., §§ 4668, 4669; Pope's Dig., §§ 5756, 5757; A.S.A. 1947, §§ 78-1319, 78-1320.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred by a Type 2

transfer as provided in § 25-2-105 to the Assessment Coordination Department pursuant to § 25-28-102(a).

Publisher's Notes. This section is being set out to correct a department name in subsection (b).

14-386-115. Order of assessment.

(a)(1) As soon as the fencing board shall have formed its plan and shall have ascertained the cost of the fencing, it shall report it to the county court, which shall at once, by order, assess the cost upon the land in the district, assessing each parcel of land according to its value as shown by the last county assessment on file in the office of the county clerk.

(2) In the case of land owned by railroad companies, the assessment shall be made according to the value of the land as shown by the last assessment made by the Assessment Coordination Department.

(b)(1) If the estimated cost of the fencing shall exceed one percent (1%) of the assessed value of the land as indicated, then it shall be provided by the order that the assessment shall be paid in successive annual installments, so that no assessment shall in any one (1) year exceed one percent (1%) of the assessed value of the land for the fencing.

(2) The order shall fix the day in each year when the assessment for the year shall be paid, and the day fixed for the payment of the first installment shall not be later than sixty (60) days from the date of the order making the assessment.

(c) The order of the county court assessing the cost of fencing may be in the following form:

"Whereas, Two-thirds of the landowners of Fencing District No..... have petitioned for the formation of said district, and,

“Whereas, Said district has been formed and established by orders of this court on said petition and a fencing board for said district have been appointed and have qualified and have reported to the court an estimate of the cost of fencing said district, and,

“Whereas, The estimated cost of said fencing is dollars, amounting to percent of the assessed value of said real property; therefore,

“It is now ordered and adjudged by the court that all land situated in said district be assessed at the rate of percent upon the dollar of the said valuation, as the same appears by the assessment made by the assessor of this county, now on file in the county clerk’s office, which assessment shall be paid on or before the day of, 20...., and such assessment shall be a charge against and lien upon the lands in said district from the date of said order.”

History. Acts 1891, No. 158, §§ 9, 10, 13, p. 272; 1893, No. 18, § 1, p. 22; 1911, No. 238, § 3; C. & M. Dig., §§ 4667, 4670, 4672; Pope’s Dig., §§ 5755, 5758, 5760; A.S.A. 1947, §§ 78-1311, 78-1312, 78-1314.

Publisher’s Notes. This section is being set out to correct a department name in subdivision (a)(2).

CHAPTER 387

STOCK LAW DISTRICTS

SUBCHAPTER.

3. CREATION OF DISTRICT — ELECTION METHOD.

SUBCHAPTER 3 — CREATION OF DISTRICT — ELECTION METHOD

SECTION.

14-387-301. Order for election.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

14-387-301. Order for election.

(a) Whenever twenty-five percent (25%) of the qualified electors of three (3) or more townships in any county in this state, as shown by the election returns for Governor at the last general election preceding the date of the petition, shall petition the county court for the privilege of voting on the question of restraining horses, mules, asses, cattle, goats, swine, and sheep, or any two (2) or more of these animals or the male species of them, from running at large, the court shall make an order for an election in the townships to be held at any general or special election for state or county officers.

(b) If petitioners file with their petition proper bond to be approved by the court conditioned to pay all the cost and expense of a special election, the court may call an election in accordance with § 7-11-201 et seq. at any time upon the filing of the petition by giving notice of it as provided by law for general elections if the petition contains twenty-five percent (25%) of the qualified electors residing within each township mentioned in the petition.

History. Acts 1947, No. 368, § 1; A.S.A. 1947, § 78-1401; Acts 2005, No. 2145, § 57; 2007, No. 1049, § 79; 2009, No. 1480, § 97; 2011, No. 778, § 5.

Amendments. The 2007 amendment inserted “in accordance with § 7-5-103(b)” in (b); and deleted former (c).

The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (b).

The 2011 amendment substituted “If petitioners file” for “If petitioners shall file” in (b).





